A demurrer to this complaint, on the ground that it did not state a cause of action, was overruled; and from this ruling the defendant appeals. The chief grounds of the demurrer are two: (1) That the article is not libellous; (2) That it is privileged.

As to (1) the court, in referring to the epithet of "Bucksniff," very properly says: "It is a nickname which is a name of reproach, and an opprobrious appellation, and is in the similitude of 'Pecksniff,' one of the familiar and most contemptible characters in Dickens;" and holds that this literary allusion and accusation of divinity are *prima facie* libellous. This view is undoubtedly right, both on principle and authority. Even if the charges are somewhat novel, they are ample to subject the plaintiff to one or more of the indignities of "shame, disgrace, hatred, scorn, ridicule, and contempt," to all of which indignities the court declares the charges subjected him.

Point (2) need scarcely concern us; for even if the communication were privileged, and the occasion not overstepped, yet malice, which is here charged, is a sufficient replication to privilege.

RIGHTS OF ACCESS TO UNDERLYING STRATA OF THE EARTH'S SURFACE. — A very pretty question of first impression has been raised in Pennsylvania in the recent case of *Chartiers Block Coal Co.* v. *Mellon*, 25 Atl. Rep. 597, and on these facts. The defendant landowner granted to the plaintiff by the same form of grant as he would convey the fee of land all the coal under his land, and the mining rights and privileges, reserving no rights in the coal, nor ways to or through the coal. In Pennsylvania this passes to the plaintiff, not a profit, a mere right to go on and take, but the full title to a subterranean estate in land of certain depth, — an estate in land of as high a legal degree as the grantor's remaining fee, which remainder happens in the order of nature to be both above and below his (*Lillibridge* v. *Coal Co.*, 143 Penn. St. 293; cf. *Eardley* v. *Granville*, L. R. 3 Ch. Div. 826). This land proves to be in the oil region, and the grantor proceeds to sink wells through the plaintiff's slice of land. Now, is the grantor trespassing on the grantee's land, or must he have this right of access to the lower levels of his fee? For observe, he reserves no such easements. The facts, it will be seen, are almost perfect.

It will be agreed on all hands that he must have this access; the necessities of the case demand it. Then the interesting inquiry is, What kind of a right is it?

It was suggested by the judge below that the right of access was a way of necessity, and in one opinion on the appeal that it was a natural right. The latter said: "I would lay down the broad proposition that the several layers or *strata* composing the earth's crust are by virtue of their order and arrangement subject to reciprocal servitudes; and as these are imposed by the laws of nature, and are indispensable to the preservation and enjoyment of the several layers or *strata* to and from which they are due, the courts should recognize and enforce them;" and "the necessity for access results from the work of nature just as truly as the necessity for support."

Of course this right is allowed by the necessities of the situation, and it is in a certain sense a way, — at least it is a means of access, — and so may be not inaptly called a way of necessity. Moreover, in this case,

and probably in the majority of cases, it will make no difference what it is named, for under either name it will exist. But if way of necessity is examined there appear certain limitations resting on the real nature of its doctrine that could be here ill-applied. There shall, for instance, be but one way of necessity, — a restriction which would be curious to apply to oil-wells. Furthermore, a way of necessity does not always arise where there is no other access (1 Wms. Saunders, 323 *a*), but only where there has been a grant or the equivalent of a grant (Leake, "Uses and Rights of Land," p. 267). Thus, if an inaccessible tenement should be separated by escheat, no way of necessity exists (*Proctor* v. *Hodgson*, 10 Ex. 824). Such limitations show the nature of way of necessity, — that it is an implied grant of an easement arising between grantor and grantee, since it cannot be considered the transfer of land would have taken place without it. As in other easements of necessity, a man shall not derogate from his grant.

These questions have to do only with the inception, the acquisition of this right, for, once acquired, it is the same in either case, — a right in another's land, an easement. But it is just this point of acquisition that makes the only difference between natural rights and ordinary easements. The right of access in the principal case must exist, not because of any grant implied or real, but for the same reasons that riparian rights and rights of support exist. Like them, it is a natural right, and must be treated as always having existed.

Besides giving the true aspect of the origin of the right, the last view will be applying to new facts a broader principle, and one with more room to accept the new situations.

IN the death of Moses Day Kimball, which occurred in Washington on April 1st, the School has lost one of the most promising of its recent graduates; while those of us who knew him have lost a good and true friend. At the time of his death he was filling the position of private secretary to Justice Gray, of the United States Supreme Court, — a much-prized appointment, given to him on his graduation last June. In the School his exceptional ability was recognized on all sides, and his untiring devotion to his work was the admiration of every one. He was invariably pleasant and courteous to all, kind and self-sacrificing. He would always cheerfully give up a part of his time — so abundantly filled with his own work — to explain to a less able fellow-student some difficult point of law which his own quick and acute mind had easily grasped. He was never so busy that he could not give to others whatever aid they asked of him; and he never gave grudgingly, but kindly, pleasantly, and simply. He did not thrust himself forward, nor make any claims to the place of leader, which was universally accorded him. He was respected by all who came in contact with him, loved and admired by those who had the good fortune to be his intimate friends. All looked forward to a career for him full of honor and usefulness, and it seems peculiarly sad that death should have cut short a life that promised so much.[1]

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[1] We are indebted for this notice to Oliver Prescott, Jr., a fellow-editor and classmate of Moses Day Kimball. — EDITORS.